

### **REMARKS/ARGUMENTS**

The Office Action mailed on March 31, 2009 has required restriction from among the following two groups.

**Group I:** Claim(s) 1-17, 21-22, and 45-50, drawn to methods of treating multi-organ failure, kidney dysfunction or wound healing comprising delivering cells to a patient;

**Group II:** Claims 18-20, drawn to methods of treating multi-organ failure, kidney dysfunction or wound healing comprising delivering a stimulant of stem cell mobilization;

**Group III:** Claim(s) 51-53, drawn to composition comprising hematopoietic stem cells and mesenchymal stem cells.

In response, Applicants elect **Group I**, with traverse, for further examination on the merits.

Applicants assert that the examination of Groups I and III would not place a serious burden on the Examiner. In order to properly restrict claims there must be an undue burden on the Examiner if the restriction was not made.<sup>1</sup> Group I is drawn to methods of treatment employing the stem cells, and Group III is drawn to composition of the stem cells. Applicants believe a search for the stem cells or the method of treatment using stem cells would uncover references encompassing both Groups, thus would not impose undue burden on the Examiner. Applicants respectfully submit that Groups I and III should be examined together, and request withdrawal of the Restriction Requirement for these Groups.

If the Examiner maintains this Restriction between the above Groups, then it is the Applicants understanding that the claims of Groups I and III will be rejoined upon allowance of a linking claim. Such rejoinder is respectfully requested.

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<sup>1</sup> MPEP § 803.

The Restriction Requirement also requires election of a single disclosed species. The Examiner noted that although independent claims recite the delivery of stem cells, several dependent claims further limit stem cells to various differentiated cells. Thus according to the Examiner, the generic claims include the following species:

- a) hematopoietic stem cells;
- b) mesenchymal stem cells;
- c) hemangioblasts;
- d) endothelial cells (including vascular endothelial cells); and
- e) renal tubular cells

Applicants hereby elect “mesenchymal stem cells” as the single disclosed species within the scope of Group I. Claims 1, 3, 5-10, 21, 22 and 45-50 read on the elected species.

Applicant understands that claims to additional species, written in dependent form or otherwise included in a generic claim will be considered by the Examiner, once a generic claim is found allowable. Hence, Applicant requests the Examiner to consider for allowance all unelected species, once a generic claim is found allowable.

**CONCLUSION**

Applicant respectfully requests prompt examination in the application. If there are any questions regarding this Response, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Applicant believes no additional fees are due with the filing of this Response. However, if any additional fees are required or if any funds are due, the USPTO is authorized to charge or credit Deposit Account Number: **50-0311**, Customer Number: **30623**, Reference Number: **38447-201N01US**.

Respectfully submitted,

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